

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ASHLEY M. CLEVINGER,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 12-CV-0553-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 14 and 16). Plaintiff is represented by Maureen J. Rosette. Defendant is represented by Nancy A. Mishalanie. This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g);  
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social  
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is  
7 limited: the Commissioner's decision will be disturbed "only if it is not supported  
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means  
10 relevant evidence that "a reasonable mind might accept as adequate to support a  
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,  
12 substantial evidence equates to "more than a mere scintilla[,] but less than a  
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this  
14 standard has been satisfied, a reviewing court must consider the entire record as a  
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. If the evidence in the record "is  
18 susceptible to more than one rational interpretation, [the court] must uphold the  
19 ALJ's findings if they are supported by inferences reasonably drawn from the  
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
19 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner  
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
2 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
3 404.1520(b); 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis  
5 proceeds to step two. At this step, the Commissioner considers the severity of the  
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the  
7 claimant suffers from “any impairment or combination of impairments which  
8 significantly limits [his or her] physical or mental ability to do basic work  
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);  
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to  
13 several impairments recognized by the Commissioner to be so severe as to  
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§  
15 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more  
16 severe than one of the enumerated impairments, the Commissioner must find the  
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity  
19 of the enumerated impairments, the Commissioner must pause to assess the  
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work  
2 activities on a sustained basis despite his or her limitations (20 C.F.R. §§  
3 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the  
4 analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's  
6 RFC, the claimant is capable of performing work that he or she has performed in  
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv);  
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the  
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
10 404.1520(f); 416.920(f). If the claimant is incapable of performing such work, the  
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's  
13 RFC, the claimant is capable of performing other work in the national economy.  
14 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,  
15 the Commissioner must also consider vocational factors such as the claimant's age,  
16 education and work experience. *Id.* If the claimant is capable of adjusting to other  
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
18 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other  
19 work, the analysis concludes with a finding that the claimant is disabled and is  
20 therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.  
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
3 the analysis proceeds to step five, the burden shifts to the Commissioner to  
4 establish that (1) the claimant is capable of performing other work; and (2) such  
5 work “exists in significant numbers in the national economy.” 20 C.F.R. §§  
6 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 7 ALJ’S FINDINGS

8 Plaintiff filed applications for disability insurance benefits and supplemental  
9 security income disability benefits on August 14, 2009. Tr. 119-26, 193. These  
10 applications were denied initially and upon reconsideration and a hearing was  
11 requested. Tr. 82-88, 94-99. A hearing was held before an Administrative Law  
12 Judge on December 14, 2010. Tr. 43-65. The ALJ rendered a decision denying  
13 Plaintiff benefits on April 7, 2011. Tr. 21-30.

14 The ALJ found that Plaintiff met the insured status requirements of Title II  
15 of the Social Security Act through September 30, 2009. Tr. 23. At step one, the  
16 ALJ found that Plaintiff had not engaged in substantial gainful activity since  
17 September 12, 2008, the alleged onset date. Tr. 23. At step two, the ALJ found  
18 that Plaintiff had severe impairments, but, at step three, the ALJ found that  
19 Plaintiff’s impairments did not meet or medically equal a listed impairment. Tr.  
20 23–24. The ALJ determined Plaintiff had the residual functional capacity to:

1 perform a full range of work at all exertional levels. The claimant is  
2 able to understand, remember, and complete simple three step tasks.  
3 The claimant's concentration, persistence, or pace is occasionally  
4 impaired, but not impaired to the extent that it would preclude the  
performance of three step tasks. The claimant is able to have  
superficial interactions in the workplace, and she would benefit from  
additional time learning new work tasks.

5 Tr. 25-26. At step four, the ALJ found that Plaintiff was able to perform her past  
6 relevant work as an assembler one of lighting fixtures, sales clerk of food, molding  
7 machine tender, folding machine operator, and trimmer helper. Tr. 29-30. The  
8 ALJ concluded that Plaintiff was not disabled and denied her claims on that basis.  
9 Tr. 30.

10 The Appeals Council denied Plaintiff's request for review on August 14,  
11 2012, making the ALJ's decision the Commissioner's final decision for purposes  
12 of judicial review. Tr. 1-6; 20 C.F.R. §§ 404.981, 416.1484, and 422.210.

### 13 ISSUE

14 Plaintiff raises one issue for review; whether the ALJ properly considered  
15 and rejected the opinion of John Arnold, Ph.D. ECF No. 14 at 10-13.

### 16 DISCUSSION

17 Plaintiff contends that she was more limited from a psychological standpoint  
18 than what was determined by the ALJ. ECF No. 14 at 10. Dr. Arnold evaluated  
19 Plaintiff on three occasions and also provided her limited counseling services  
20 (infrequent) at the CHAS Clinic. Thus, Plaintiff asserts that as her treating

1 therapist, Dr. Arnold's opinion should have been afforded greater weight than the  
2 opinions of other physicians. *Id.* at 11.

3 A treating physician's opinions are entitled to substantial weight in social  
4 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
5 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,  
6 an ALJ may reject it only by offering "clear and convincing reasons that are  
7 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th  
8 Cir. 2005). "However, the ALJ need not accept the opinion of any physician,  
9 including a treating physician, if that opinion is brief, conclusory and inadequately  
10 supported by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation  
11 omitted). "If a treating or examining doctor's opinion is contradicted by another  
12 doctor's opinion, an ALJ may only reject it by providing specific and legitimate  
13 reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d  
14 at 1216 (*citing Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)).

15 Dr. Arnold assessed marked limitations in Plaintiff's ability to learn new  
16 tasks, in her ability to relate appropriately to co-workers and supervisors, and in  
17 her ability to communicate and perform effectively in a work setting with public  
18 contact. Tr. 27. The Court observes that Dr. Arnold estimated that Plaintiff would  
19 only be impaired to this extent for 3 to 6 months. Tr. 552. The ALJ gave little  
20 weight to Dr. Arnold's opinion because his opinion is inconsistent with the



1 claimant's activities, which include working at Goodwill, living with her mother  
2 including having lived at the Marion House<sup>1</sup> with other women, playing games,  
3 doing crossword puzzles, driving, doing chores, cooking, and running errands. Tr.  
4 27-28. Further, the ALJ determined that Dr. Arnold's opinion was contradicted by  
5 the opinion of examining psychologist Samantha Chandler, Psy.D. and State  
6 agency reviewing experts, Rita Flanagan, Ph.D., and Mary Gentile, Ph.D., who  
7 each found Plaintiff could follow simple instructions and interact at least  
8 superficially with others in the workplace. Tr. 28.

9 Plaintiff's interpretation of the evidence is insufficient to require this Court  
10 to reverse the ALJ's decision when that decision is supported by substantial  
11 evidence and the ALJ gives specific and legitimate reasons for discounting  
12 Plaintiff's treating therapist's opinion.

13 The ALJ discussed all the evidence and concluded; "the above residual  
14 functional capacity assessment is supported by objective medical evidence of the  
15 record and the opinions of Dr. Flanagan, Dr. Gentile, and Dr. Chandler, and the  
16 partial opinions of Dr. Dalley and Dr. Arnold." Tr. 29. The Court has reviewed  
17 the record and substantial evidence supports the ALJ's conclusions.

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<sup>1</sup> Also referred to as Myriam's House. Tr. 550.

**IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment, ECF No. 16, is

**GRANTED.**

2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **DENIED.**

The District Court Executive is hereby directed to file this Order, enter Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

**DATED** July 30, 2013.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge